

[Skip to main content](#)**19 MISC 000009 The Haven Center, Inc. , et al. v. Town of Bourne , et al. VHAY**

- Case Type
- Miscellaneous
- Case Status
- Open
- File Date
- 01/04/2019
- DCM Track:
-
- Initiating Action:
ZJA - Validity of Zoning, G. L. Chapter 240, Sec. 14A and Chapter 185, § 1(j 1/2)
- Status Date:
01/04/2019
- Case Judge:
Vhay, Hon. Michael D
- Next Event:
-

Property Address

Bourne

[All Information](#) [Party](#) [Event](#) [Docket](#) [Financial](#) [Receipt](#) [Disposition](#)**Party Information****The Haven Center, Inc.**

- Plaintiff

Party Attorney

- Attorney
- Zehnder, Esq., Benjamin E
- Bar Code
- 556519
- Address
- La Tanzi, Spaulding & Landreth LLP
PO Box 2300
Orleans, MA 02653
- Phone Number
- (508)255-2133

[More Party Information](#)**MacArthur Park Place LLC**

- Plaintiff

Party Attorney

- Attorney
- Zehnder, Esq., Benjamin E
- Bar Code
- 556519
- Address
- La Tanzi, Spaulding & Landreth LLP
PO Box 2300
Orleans, MA 02653
- Phone Number
- (508)255-2133

[More Party Information](#)**Town of Bourne**

- Defendant

Party Attorney

- Attorney
- Troy, Esq., Robert Sweeney
- Bar Code
- 503160
- Address
- Troy Wall Associates
90 Old Kings Highway
Sandwich, MA 02563

- Phone Number
(508)888-5700

[More Party Information](#)

Meier, Peter J.
- Defendant

- Party Attorney**
- Attorney
 - Troy, Esq., Robert Sweeney
 - Bar Code
 - 503160
 - Address
 - Troy Wall Associates
90 Old Kings Highway
Sandwich, MA 02563
 - Phone Number
(508)888-5700

[More Party Information](#)

Macleod-Froman, Judith
- Defendant

- Party Attorney**
- Attorney
 - Troy, Esq., Robert Sweeney
 - Bar Code
 - 503160
 - Address
 - Troy Wall Associates
90 Old Kings Highway
Sandwich, MA 02563
 - Phone Number
(508)888-5700

[More Party Information](#)

Potter, James L.
- Defendant

- Party Attorney**
- Attorney
 - Troy, Esq., Robert Sweeney
 - Bar Code
 - 503160
 - Address
 - Troy Wall Associates
90 Old Kings Highway
Sandwich, MA 02563
 - Phone Number
(508)888-5700

[More Party Information](#)

Slade, George G.
- Defendant

- Party Attorney**
- Attorney
 - Troy, Esq., Robert Sweeney
 - Bar Code
 - 503160
 - Address
 - Troy Wall Associates
90 Old Kings Highway
Sandwich, MA 02563
 - Phone Number
(508)888-5700

[More Party Information](#)

MacDonald, Jared P.
- Defendant

- Party Attorney**
- Attorney
 - Troy, Esq., Robert Sweeney
 - Bar Code
 - 503160
 - Address
 - Troy Wall Associates
90 Old Kings Highway
Sandwich, MA 02563

- Phone Number
(508)888-5700

[More Party Information](#)

Events

Date	Type	Event Judge	Result
01/31/2019 10:45 AM	Case Management Conference	Vhay, Hon. Michael D	Case Management Conference held

Docket Information

Docket Date	Docket Text	Amount Owed
01/04/2019	Complaint filed.	
01/04/2019	Case assigned to the Average Track per Land Court Standing Order 1:04.	
01/04/2019	Land Court miscellaneous filing fee Receipt: 397905 Date: 01/04/2019	\$240.00
01/04/2019	Land Court surcharge Receipt: 397905 Date: 01/04/2019	\$15.00
01/04/2019	Land Court summons Receipt: 397905 Date: 01/04/2019	\$30.00
01/04/2019	Uniform Counsel Certificate for Civil Cases filed by Plaintiff.	
01/11/2019	The case has been assigned to the A Track. Notice sent. Judge: Vhay, Hon. Michael D	
01/11/2019	Order, Issued. (Copy Sent to Attorney Benjamin E. Zehnder)	
01/11/2019	Event Scheduled Judge: Vhay, Hon. Michael D Event: Case Management Conference Date: 01/31/2019 Time: 10:45 AM Notice sent to Plaintiff	
01/16/2019	Citation by publication in the Bourne Enterprise or Bourne Courier, returnable 03/04/2019, issued.	
01/22/2019	Summons returned to Court with service on Town of Bourne, Peter J. Meier Member of the Board of Selectmen of the Town of Bourne, Judith Macleod-Froman Member of the Board of Selectmen of the Town of Bourne, James L. Potter Member of the Board of Selectmen of the Town of Bourne, George G. Slade Member of the Board of Selectmen of the Town of Bourne, Jared P. MacDonald Member of the Board of Selectmen of the Town of Bourne filed.	
01/29/2019	Joint Case Management Conference Statement filed.	
01/31/2019	Case Management Conference Held: Case Management Conference scheduled on: 01/31/2019 10:45 AM Has been: Case Management Conference held Hon. Michael D Vhay, Presiding Appeared: Staff:	
01/31/2019	Case management conference and initial intervention event held. All parties appeared through counsel. Plaintiffs contend that (1) Bourne's general bylaw regarding non-medical cannabis facilities violates the Zoning Act, and (2) the Town's selectmen improperly have refused to negotiate a "host community agreement" (the "HCA") with Plaintiffs. The Town argues that its general bylaw is lawful and that, in fact, one of the Plaintiffs terminated negotiations over the HCA. The Court questioned its subject-matter jurisdiction over the HCA issue. Accordingly, unless Plaintiffs sooner dismiss their HCA-related claims, the Court ORDERS Plaintiffs to file by February 14, 2019 a memorandum explaining why the Land Court has subject-matter jurisdiction to over Plaintiffs' HCA issues. The Court ORDERS the Town to file within fourteen days of receipt of Plaintiffs' memorandum any responsive memorandum. All parties assent to receiving notice from the Court via electronic mail instead of regular mail. SO ORDERED. Notice of Docket Entry sent to parties	
	Judge: Vhay, Hon. Michael D	
01/31/2019	Plaintiffs' Return of Service on January 16, 2019 Order of Notice filed.	
01/31/2019	Notice of Appearance of Robert Troy, Esq. for Defendants, Town of Bourne et al, filed..	
01/31/2019	Defendants, Town of Bourne and Bourne Board of Selectmens' Answer to Plaintiffs' Complaint filed.	
02/14/2019	Plaintiffs' Motion to Dismiss Counts III and IV filed..	

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>
02/14/2019	Plaintiffs' Motion for Protective Order filed..	
02/20/2019	The Court has received Plaintiffs' Motion to Dismiss Counts III and IV of their Complaint. The Court ORDERS any party who opposes that motion to file its opposition no later than March 1, 2019. The Court also has received Plaintiffs' Motion for Protective Order. The Court DENIES that motion, without prejudice, as the motion doesn't comply with Land Court Rule 7. Plaintiffs may renew the motion once they have filed the certificate described in Rule 7. SO ORDERED. Notice of Docket Entry sent to parties Judge: Vhay, Hon. Michael D	
02/21/2019	Plaintiffs' Renewed Motion for Protective Order filed..	
02/21/2019	The Court has received Plaintiffs' Renewed Motion for Protective Order. The Court ORDERS any party who opposes that motion to file its opposition no later than March 1, 2019. SO ORDERED. Notice of Docket Entry sent to parties Judge: Vhay, Hon. Michael D	
03/04/2019	Defendants' Opposition to Plaintiffs' Motion to Dismiss Counts III and IV filed.	
03/04/2019	Defendants' Opposition to Plaintiffs' Motion for Protective Order filed.	
03/06/2019	The Court has received Plaintiffs' Motion to Dismiss Counts III and IV of their complaint. The Court DENIES the motion. Counts III and IV seek a declaratory judgment and a writ of mandamus in connection with an alleged refusal by the defendant Bourne selectmen to enter into a "host community agreement" with Plaintiffs under G.L. c. 94G, sec. 3. At the case-management conference in this matter, the Court questioned its subject-matter jurisdiction over Counts III and IV. The Court gave Plaintiffs until February 14, 2019 to either dismiss the Counts or submit a memorandum explaining why the Court had subject-matter jurisdiction over them. Plaintiffs chose the former course, and asked that the Court to dismiss Counts III and IV without prejudice. The Bourne Selectmen oppose the motion: having answered Plaintiffs' complaint, the Selectmen want their day in court or a dismissal with prejudice. See Rule 41(a)(2), Mass. R. Civ. P. Where a complaint in the Land Court presents some claims that are within the Court's jurisdiction (for example, Counts I and II of Plaintiffs' complaint), and others that aren't (like Counts III and IV), "the court should not dismiss the case out of hand; rather, 'the proper procedure is for the judge to ask the Chief Administrative Justice to transfer the case, or the judge, or both, to the appropriate department of the Trial Court.'" Arno v. Commonwealth, 457 Mass. 434, 446 (2010), quoting Konstantopoulos v. Whately, 384 Mass. 123, 129 (1981). See also Sullivan v. Lawlis, 93 Mass. App. Ct. 409, 416 (2018) (same). Since the Selectmen demand a resolution of Counts III and IV on the merits, this Court will request either a transfer of this case to the Barnstable Superior Court (with a justice of the Superior Court being designated a justice of this Court for purposes of deciding Count I, which is within this Court's exclusive jurisdiction) or designation of a justice of this Court as a justice of the Superior Court for purposes of hearing Counts III and IV. Pending a ruling on this Court's request for transfer or interdepartmental assignment, the Court STAYS all action on Counts III and IV of the Complaint, including any discovery relating solely to Counts III and IV. The Court otherwise ORDERS the parties to complete all discovery (fact and expert) on Plaintiffs' claims in Counts I and II by May 3, 2019. (Plaintiffs also have filed a motion for a protective order. To the extent that the motion seeks to prevent discovery on issues relating to Counts I and II, the motion is DENIED, but any discovery relating solely to Counts III and IV is nonetheless stayed.) SO ORDERED. Notice of Docket Entry sent to parties Judge: Vhay, Hon. Michael D	

Financial Summary

<u>Cost Type</u>	<u>Amount Owed</u>	<u>Amount Paid</u>	<u>Amount Dismissed</u>	<u>Amount Outstanding</u>
Cost	\$285.00	\$285.00	\$0.00	\$0.00
Total	Total	Total	Total	Total

Receipts

<u>Receipt Number</u>	<u>Receipt Date</u>	<u>Received From</u>	<u>Payment Amount</u>
397905	01/04/2019	Zehnder, Esq., Benjamin E	\$285.00
Total	Total	Total	Total

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Undisposed		Vhay, Hon. Michael D